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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,625	09/29/2004	Giorgio Manfredini	Q83943	2794
23373	7590	07/11/2005	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			TRIEU, THERESA	
			ART UNIT	PAPER NUMBER
			3748	

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/509,625	<b>Applicant(s)</b> MANFREDINI ET AL.	
	<b>Examiner</b> Theresa Trieu	<b>Art Unit</b> 3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>Sept. 29, 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Receipt and entry of Applicants' Preliminary Amendment filed on September 29, 2004 is acknowledged.

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the term "in particular" renders the claims indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

*Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckerle et al. (Eckerle) (Patent Number 3,331,258).*

Regarding claims 1 and 4, as shown in Figs. 1 and 8, Eckerle discloses a positive displacement pump comprising two elements (3) that are rotatable with respect to one another and which mesh with one another, each rotatable element being rotatably mounted in the pump

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with centered coupling without interference with a corresponding centering body characterized in that at least one of the two rotatable at the location of the centering walls, the undercut regions (22) comprising a wall portion which is spaced with respect to the facing wall of the respective centering body, the undercut region being elongated in the direction of an axis of rotation of the at least one rotatable element about the corresponding centering body; at least one gear or rotor (19) mounted rotatable inside a cylindrical cavity and having a peripheral curved surface for defining the centered coupling of the rotor to the cylindrical cavity, portions of undercut wall/depressions (22) spaced from cylindrical cavity being provided on the peripheral surface.

All functional implication and the statement of intended use have been fully considered. However, they are deemed not to impose any structural limitations distinguishable over the Eckerle device, which is certainly capable of performing as a gear pump if so desired. In other words, the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**3. *Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckerle '258 in view of Joma-Polytec GMBH (JOMAN) (Publication Number DE 29,810,548).***

Eckerle discloses the invention as recited above; however, Eckerle fails to disclose at least one gear or sprocket mounted rotatably on a pin.

Regarding claims 2 and 3, JOMAN teaches that it is conventional in the art to utilize at least one gear or sprocket (10) mounted rotatably on a pin (16), the central opening of the sprocket comprising portions of centering wall (not numbered; however, clearly seen in Fig. 1) which define the centered coupling of the sprocket to the pin (16) and which alternate with portions of undercut wall (18) spaced from the pin (16), three portions of centering wall (see fig. 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have utilized the a pin, as taught by JOMAN in the Eckerle apparatus, since the use thereof would have improved the performance and the efficiency of the pump device.

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*Allowable Subject Matter*

4. Claims 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Prior Art*

The IDS (PTO-1449) filed on September 29, 2004 has been considered. An initialized copy is attached hereto.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of six patents: Marsh (U.S. Patent Number 3,374,748), Gerber (U.S. Patent Number 3,887,310), Fernau et al. (U.S. Patent Number 5,156,540), Thompson et al. (U.S. Patent Number 6,352,419), Takagi (U.S. Patent Number 6,568,929), and Sakakibara et al. (Publication Number JP 03-202686), each further discloses a state of the art.

*Communication*

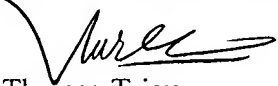
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TT  
July 1, 2005



Theresa Trieu  
Primary Examiner  
Art Unit 3748